A

Yap Kian @ Yap Sin Tian (suing as Chairman of the United Chinese Schools Committees' Association Malaysia (Dong Zong) and members of the community centre, apart from named defendants) v Poh Chin Chuan & Ors

B

HIGH COURT (KUALA LUMPUR) — ORIGINATING SUMMONS NO 24NCVC-87-01 OF 2015

C VAZEER ALAM MYDIN J

28 MAY 2015

Unincorporated Associations — Societies — Constitution — Interpretation of D *— Dissolving of members of society — Validity of — Whether there was expressed provisions under domestic law — Domestic laws — Internal dispute resolution mechanisms — Whether exhausted — Whether action maintainable — Interpretation Acts 1948 and 1967 ss 47 & 94*

E The plaintiff was the Chairman of the United Chinese School Committee's Association Malaysia ('Dong Zong') while the defendants were current members of the central committee of Dong Zong ('CC') and of which, eight were the current members of the central executive committee ('CEC'). The plaintiff brought the present action in his capacity as the chairman and on F behalf of all CC members (other than the defendants) to essentially prevent the first defendant from convening a CC meeting with the agenda of dissolving the 29th Dong Zong CEC; and to re-elect the positions of the 29th Dong Zong CEC members. According to the plaintiff, under the Dong Zong's Constitution ('the constitution'), the first defendant did not have the authority G to convene any CC meeting; and the tenure of the CEC was for four years from the date of election and that the CC (the body that elects the CEC) cannot dissolve the CEC before its term of office comes to a natural end and as such the proposed agenda for the meeting, which seeks to dissolve and re-elect the CEC before the end of its term, is unlawful. The issue that arose before the court was H the validity of the proposed agenda contained in the notice of meeting issued by the first defendant, which essentially revolved around the question of whether the CC can dissolve and re-elect the CEC before the expiry of its terms of office. The plaintiff contended that the term of office of the CEC was four years from the date of election, as provided in rule 5A.9 of the constitution, and I as such submitted, that once elected, the CEC could not be dissolved and must serve out its term of office. The plaintiff mounted this argument on grounds that the constitution was silent as to whether the CC, the body empowered by the constitution to elect the office bearers who then make up the CEC, has the power to dissolve and re-elect the CEC before the expiry of its constitutional

term of office. The defendants, whilst conceding that the constitution is silent on this issue, contend that the CC, as the electing or appointing body, has in law the power to dissolve and re-elect the office bearers, and by extension the CEC, during the pendency of term of office of the CEC. The defendants argued that by virtue of rule 9.3 of the constitution, even though the constitution is silent on the matter of the CC having the power to dissolve and re-elect the CEC, such lacuna can be referred to the CEC and the CC for determination.

Held:

(1) When domestic or internal dispute resolution mechanisms are provided in a society's constitution, rules or by-laws, then disputes involving the society and its members must be first resolved through such mechanism, before seeking the assistance of the court. The plaintiff would have to exhaust the domestic remedies as provided in the constitution and it was premature for the plaintiff to come to court with this action. There was no merit in the plaintiff's contention that the CEC once elected must serve out its full term of four years and that it could not be dissolved mid stream. Where a constitution or law confers powers to appoint, the appointing authority would also have the power to remove. This principle was also statutorily embodied ss 47 and 94 of the Interpretation Acts 1948 and 1967 (see paras 31 & 33–34).

(2) In the absence of an express term in the constitution of a registered society, the executive committee or its members do not have an indefeasible right of continuity of office for the period for which they have been elected. Where the majority members of a registered society have lost confidence in the executive committee, or for that matter any member of that committee, during a period for which they have been elected, the executive committee or any of its members may be removed before the expiry of the term by a vote of the members of the electing body at a properly convened meeting (see para 42).

(3) The CEC is elected for a term of four years and the constitution is silent on the powers of the CC to remove and/or re-elect the office bearers who constitute the CEC. In such circumstance, is the society powerless to do anything to the composition of the CEC once it is elected for a four year term, even when the said committee has become totally dysfunctional and is unable to promote the objects of the society? No. The CEC's term of four years as fixed by rule 5A.9 of the constitution, means nothing more than that the committee's period of office will automatically come to an end at the expiry of the period, provided that it is not terminated earlier at a proper meeting of the electing body. The period of office stipulated in the constitution does not afford security of tenure to the members of CEC (see para 43).

(4) It would be lawful for the CC, comprising only the 25 members elected by the general meeting, sans the seven nominated CC members, at a properly convened meeting to consider and if deemed fit to remove and re-elect the office bearers elected in accordance to rule 5.2.3 of the constitution and thereafter reconstitute the CEC by appointment of the three additional members nominated by the freshly elected chairman. The proposed agenda was valid and proper in law (see paras 45–46).

[Bahasa Malaysia summary

Plaintif adalah Pengerusi United Chinese School Committee's Association Malaysia ('Dong Zong') manakala defendan-defendan adalah ahli semasa Jawatankuasa Pusat Dong Zong ('CC'), yang mana lapan daripada mereka adalah ahli semasa jawatankuasa eksekutif pusat ('CEC'). Plaintif mengambil tindakan ini dalam kapasitinya sebagai pengerusi dan bagi pihak semua ahli CC (selain defendan-defendan) khasnya untuk menghalang defendan pertama daripada mengadakan mesyuarat CC dengan agenda membubarkan ahli CEC Dong Zong ke-29. Menurut plaintif, di bawah perlembagaan Dong Zong ('perlembagaan'), defendan pertama tidak berkuasa mengadakan apa-apa mesyuarat CC; dan tempoh pegangan jawatan CEC ialah empat tahun dari tarikh pelantikan dan bahawa CC (badan yang melantik CEC) tidak boleh membubarkan CEC sebelum tempoh memegang jawatan tamat dengan sendirinya dan dengan itu, agenda yang dicadangkan untuk mesyuarat agar CEC dibubarkan dan dilantik semula sebelum tamat tempoh, tidak sah. Isu yang timbul di mahkamah adalah kesahan agenda yang dicadangkan dalam notis mesyuarat yang dikeluarkan oleh defendan pertama, yang secara asasnya berkisar pada soalan sama ada CC boleh membubarkan atau melantik semula CEC sebelum tamat tempoh pegangan jawatannya. Plaintif menghujahkan bahawa tempoh pegangan jawatan CEC adalah empat tahun dari tarikh pelantikan, seperti yang diperuntukkan dalam peraturan 5A.9 perlembagaan, dan dengan itu menghujahkan bahawa apabila dilantik, CEC tidak akan dibubarkan dan mesti berkhidmat luar daripada pegangan jawatan. Plaintif mengutarakan hujahan ini atas alasan perlembagaan tidak menyatakan apa-apa mengenai sama ada CC, badan yang diberi kuasa oleh perlembagaan untuk melantik pemegang jawatan yang membentuk CEC, mempunyai kuasa membubarkan dan melantik CEC sebelum tamat tempoh sah pegangan jawatan. Defendan-defendan, walaupun menghujahkan bahawa perlembagaan tidak memperuntukkan apa-apa mengenai isu ini, menyatakan bahawa CC, sebagai badan yang melantik, mempunyai kuasa di bawah undang-undang untuk membubarkan dan melantik semula pemegang jawatan dan dengan tambahan CEC, semasa penggantungan tempoh pegangan jawatan CEC. Defendan-defendan menghujahkan bahawa di bawah peraturan 9.3 perlembagaan, walaupun perlembagaan tidak memperuntukkan apa-apa mengenai hal perkara CC mempunyai kuasa membubar dan melantik semula CEC, kelompongan demikian boleh dirujuk kepada CEC dan CC bagi pemutusan.

Diputuskan:

(1) Apabila mekanisma penyelesaian pertikaian dalaman diperuntukkan dalam perlembagaan persatuan, peraturan atau undang-undang kecil, pertikaian melibatkan persatuan dan ahli-ahlinya mesti diselesaikan dahulu melalui mekanisma sebelum meminta bantuan mahkamah. Plaintif perlu mengguna pakai remedi domestik yang diperuntukkan oleh perlembagaan dan adalah pra-matang untuk plaintif hadir ke mahkamah dengan tindakan ini. Tiada merit dalam hujahan plaintif bahawa setelah dilantik, CEC mesti memberi khidmat penuh selama tempoh empat tahun dan tidak boleh dibubarkan separuh jalan. Apabila perlembagaan atau undang-undang memberikan kuasa untuk melantik, pihak yang berkuasa melantik juga mempunyai kuasa melucut. Prinsip ini termaktub secara statutori dalam ss 47 dan 94 Akta Tafsiran 1948 dan 1967 (lihat perenggan 32 & 33–34).

(2) Tanpa apa-apa terma nyata dalam perlembagaan persatuan yang berdaftar,jawatankuasa eksekutif atau ahli-ahlinya tidak mempunyai hak boleh sangkal untuk terus memegang jawatan bagi tempoh mereka dilantik. Apabila ahli majoriti satu-satu persatuan tidak mempunyai kepercayaan pada jawatankuasa eksekutif, atau mana-mana jua jawatankuasa tersebut, dalam tempoh mereka dilantik, jawatankuasa eksekutif atau mana-mana jua ahlinya boleh dilucutkan sebelum tamat tempoh pegangan jawatan mereka melalui undian oleh ahli badan yang melantik dalam mesyuarat yang diadakan secara teratur (lihat perenggan 42).

(3) CEC dilantik bagi tempoh empat tahun dan perlembagaan tidak memperuntukkan apa-apa mengenai kuasa CC untuk melucutkan dan/atau melantik semula pemegang-pemegang jawatan yang membentuk CEC. Dalam hal keadaan demikian, adakah persatuan tidak berkuasa dalam pembentukan CEC apabila ia dilantik bagi tempoh empat tahun, walaupun jawatankuasa tersebut telah menjadi tidak berfungsi dan tidak boleh mempromosikan objektif persatuan? Tidak. Tempoh CEC selama empat tahun seperti yang ditetapkan oleh kaedah 5A.9 perlembagaan, tidak lain bermaksud tempoh pegangan jawatan oleh ahli jawatankuasa akan tamat secara automatik apabila tamat tempoh, sekiranya ia tidak ditamatkan awal dalam mesyuarat yang teratur oleh badan yang melantik. Tempoh pegangan jawatan yang dinyatakan dalam perlembagaan tidak memberi sekuriti tempoh pegangan jawatan kepada ahli CEC (lihat perenggan 43).

(4) Sah buat CC, yang terdiri daripada hanya 25 ahli yang dilantik oleh mesyuarat am tanpa tujuh ahli CC yang dicalonkan dalam mesyuarat yang diadakan secara teratur, untuk mempertimbangkan dan sekiranya perlu, melucutkan dan melantik semula pemegang jawatan yang dilantik, selaras dengan kaedah 5.2.3 perlembagaan dan selepas itu

membentuk semula CEC dengan pelantikan tiga ahli tambahan oleh pengerusi yang baru dilantik. Agenda yang dicadangkan sah dan teratur di bawah undang-undang (lihat perenggan 45–46).]

Notes

For cases on constitution, see 12(2) *Mallal's Digest* (5th Ed, 2015) paras 3542–3543.

Cases referred to

Cape Indian Congress v Transvaal Indian Congress 1948(2) SA 595 AD, HC (refd)
Lim Eye Thun v Majlis Peguam Malaysia & Anor [2010] 2 MLJ 444, CA (refd)
Low Fun Boon and Others v Wong Teck Chow and Others [2000] SGHC 183, HC (refd)
SI Rajah & Anor v Dato Mak Hon Kam & Ors [1993] 3 MLJ 741; [1994] 1 CLJ 215, HC (refd)
Sabdin Ghani v Musa Haji Aman [1992] MLJU 88; [1993] 2 CLJ 109, HC
SWD Rugbyvoetbalunie en Ander v Baartman and Others [2010] ZAWCHC 82, HC (refd)

Legislation referred to

Interpretation Acts 1948 and 1967 ss 47, 94
Societies Act 1966

Jadadish Chandra (Vivek Sukumaran with him) (Arbain & Co) for the plaintiff.
Yap Lai Lian (Mazlina Sukri with him) (KB Chua & Co) for the defendants.

Vazeer Alam Mydin J:

[1] By an originating summons dated 15 January 2015 the plaintiff seeks the following relief:

(a) Satu perintah deklarasi bahawa Mesyuarat-mesyuarat Jawatankuasa Pusat dan/atau Jawatankuasa Eksekutif Pusat (Exco) United Chinese School Committees' Association Malaysia (Dong Zong) dibawah Kaedah 6.3.3 dan 6.4.3 perlembagaan United Chinese School Committees' Association Malaysia (Dong Zong) hanya boleh dipanggil, dianjur dan dipengerusikan oleh Pengerusi United Chinese School Committees' Association Malaysia (Dong Zong);

(b) Satu perintah deklarasi bahawa Notis bertarikh 6.1.2015 yang dikeluarkan oleh Defendan Pertama selaku Setiausaha Agung United Chinese School Committees' Association Malaysia (Dong Zong) adalah tidak sah, ultra vires dengan Kaedah 6.3.3 dan 6.4.3 perlembagaan Pertubuhan United Chinese School Committees' Association Malaysia (Dong Zong) dan terbatal;

(c) Satu Perintah injunksi terhadap Defendan-Defendan secara sesama dan/atau berasingan, mahupun melalui kakitangannya dan/atau ejen-ejennya dan/atau orang-orang yang berkaitan dengan Defendan-Defendan daripada mengambil sebarang tindakan berkenaan penganjuran dan/atau pengadaan dan/atau memanggil Mesyuarat JawatanKuasa Pusat dan/atau sebarang Mesyuarat Jawatankuasa Eksekutif Pusat (Exco), termasuk sebarang mesyuarat yang berkaitan dengan Notis bertarikh 6.1.2015 yang dikeluarkan tersebut;

(d) Satu perintah deklarasi bahawa Notis bertarikh 6.1.2015 yang dikeluarkan oleh Defendan Pertama selaku Setiausaha Agung United Chinese School Committees' Association Malaysia (Dong Zong) adalah tidak sah, kerana tidak mempamerkan alasan dan/atau agenda yang dikemukakan adalah tidak sah, dan/atau ultra vires dengan perlembagaan Pertubuhan United Chinese School Committees' Association Malaysia (Dong Zong); dan

(e) Satu perintah deklarasi bahawa berdasarkan perlembagaan Pertubuhan United Chinese School Committees' Association Malaysia (Dong Zong) jangkamasa perwakilan ahli-ahli Jawatankuasa Pusat dan ahli-ahli Jawatankuasa Eksekutif Pusat (Exco) yang dilantik pada 23.6.2013 dan 30.6.2013 adalah tidak kurang daripada Empat (4) Tahun.

BACKGROUND

[2] The plaintiff is the Chairman of United Chinese School Committee's Association Malaysia, better known as Dong Zong. All the defendants are current members of the central committee ('CC') of Dong Zong, and of which eight of them are the current members of the Central Executive Committee (CEC') holding the following positions:

(a) Poh Chin Chuan, the first defendant is the Secretary General;

(b) Tan Kok Hooi, the second defendant is the Vice Chairman;

(c) Chu'ng Chuwn Leong, the third defendant is the CEC member;

(d) Chong Wai Yin, the fifth defendant is the CEC member;

(e) Kho Hai Meng, the sixth defendant is the Vice Chairman;

(f) Ch'ng Kee Chuan, the eleventh defendant is the Assistant Treasurer;

(g) Lim Kock Chai, the fourteenth defendant is the Treasurer; and

(h) Lau Lee Ming, the fifteenth defendant is the Vice Chairman.

[3] The plaintiff brings this action in his capacity as the Chairman of Dong Zong and on behalf of all central committee members other then the defendants named herein to essentially prevent the first defendant from

convening a central committee meeting to be held at 2pm on 20 January 2015, where the proposed agenda according to the notice of meeting dated 6 January 2015 was to consider the following motion:

> To discuss and accept the following Resolutions:
>
> (a) To dissolve the 29th Dong Zong Central Executive Committee.
>
> (b) To re-elect the positions of the 29th Dong Zong Central Executive Committee Member.

[4] The matter was fixed for hearing on the morning of 20 January 2015, on a certificate of urgency. Upon hearing counsel for parties on 20 January 2015, it became clear to me that the grounds upon which the plaintiff had premised his case in seeking the declaratory and injunctive relief in the originating summons revolved around the construction and interpretation of Dong Zong's Constitution ('the constitution'). The plaintiff's stand is that according to the constitution:

(a) the first defendant did not have the authority to convene any CC meeting and that only the plaintiff, as chairman had such authority; and

(b) the tenure of the CEC is for four years from the date of election and that the CC (the body that elects the CEC) cannot dissolve the CEC before its term of office comes to a natural end and as such the proposed agenda for the meeting, which seeks to dissolve and re-elect the CEC before the end of its term, is unlawful.

[5] When counsel appeared before me in the morning of 20 January 2015, it was evident that the matter could not be properly adjudicated as the defendants had yet to file their affidavits and the full facts were not before the court. Recognising this fact, and since the CC meeting called by the first defendant under the notice of meeting dated 6 January 2015 was scheduled to be held at 2pm on the very same day, the parties narrowed the issue for determination and agreed to an interim measure which lead to the recording of a consent order in terms, that is:

> By consent of parties the defendants agree not to proceed with the central committee meeting scheduled for 2.00pm on 20.1.2015. It is further agreed that the question of the lawfulness and/or validity of the proposed agenda as per the notice dated 6.1.2015 issued by the first defendant shall be decided by the court and in the event that the court were to decide that such a resolution arising form the aforesaid agenda is lawful, then the plaintiff shall convene a central committee meeting to discuss, deliberate and resolve the aforesaid proposed resolution as per the Notice dated 6.1.2015. The parties further agree that the members of the central committee and the Central Executive Committee appointed by the plaintiff shall not be removed pending final disposal of this matter by the court.

[6] Therefore, by this consent order, the issue for determination has been considerably narrowed and the primary issue for the court's determination is the validity of the proposed agenda contained in the notice of meeting dated 6 January 2015 issued by the first defendant, which essentially revolves on the question of whether the CC can dissolve and re-elect the CEC before the expiry of its term of office.

[7] Before I delve into the dispute and assess the arguments raised by counsel, it may be opportune to lay down the constitutional structure and organisation of Dong Zong, in order to better understand the issues at hand. After all the constitution of an association with all its rules and regulations, constitute the agreement by which the members' relationship interse, and with the association, is governed.

CONSTITUTIONAL STRUCTURE OF DONG ZONG

[8] Dong Zong is a society duly registered under the Societies Act 1966. The object of the Dong Zong is to promote and develop the cause of Chinese education in Malaysia, including the development and amelioration of Chinese schools in Malaysia, its curricula, examinations, teachers training and funding.

[9] According to rule 3 of the constitution all the State Chinese School Committee Associations or State Chinese Schools Committees and Teachers Association ('state association members') are eligible for membership of the society.

[10] The same rule 3 of the constitution provides that there can be only one member from each state in the Federation, and for this purpose, the states of Selangor and the Federal Territory of Kuala Lumpur and Putrajaya shall be treated as one state, and the state of Sabah and the Federal Territory of Labuan shall also be treated as one state.

[11] Therefore, Dong Zong is in fact an umbrella organisation comprising 13 State Associations from each of the 13 States in Malaysia.

[12] Rule 5.1.1 of the constitution states that the general meeting, comprising both annual general meeting ('AGM') and extraordinary general meeting ('EGM'), shall be the supreme authority of the society.

[13] Rule 5.1.2 of the constitution provides that each member shall send five delegates to attend the AGM among whom one shall be appointed as the chief delegate who shall exercise the right of voting. Each member is entitled to case one vote only.

[14] According to rule 6.1.1 and 6.1.2 the AGM shall be held once a year before the 30th of June each year. Whilst according to rule 6.2.1 an EGM may be convened by the chairman whenever he thinks it necessary or when at least five members requisition for an EGM to consider a particular agenda.

[15] Rule 5.2.6 provides that a body called the central committee shall execute all the resolutions approved in the general meeting and shall supervise the running of the affairs of the society.

[16] The election of the central committee is provided in rule 5.2.1 of the constitution in the following terms:

> Subject to one (1) member one (1) vote basis, members shall elect in the General Meeting six (6) State central committee members (hereinafter referred to 'the central committee States') and the rest of the non-elected members are referred to as 'the Non-central committee States'. One (1) central committee State shall be reserved for the State of Sarawak and the State of Sabah who will hold office in rotation; whereas the other five (5) central committee States shall be reserved for the eleven (11) States in West Malaysia to be contested in the election.

Therefore, according to rule 5.2.1 of the constitution, there shall be six central committee states and seven non-central committee states.

[17] And according to rule 5.2.2 of the constitution:

> Every central committee State shall nominate three (3) representatives and every Non-central committee State shall nominate one (1) representative to jointly constitute the central committee (hereinafter referred to as 'the central committee') comprising twenty five (25) central committee members (hereinafter referred to as 'the central committee members').

The definition of 'central committee' and 'central committee members' as contained in rule 5.2.2 above is quite crucial to the determination of the issues at hand. A careful reading of rule 5.2.2 of the constitution shows that the composition of the 25 central committee members is made up as follows:

(a) 18 members nominated by the central committee states (ie three each from the six central committee states); and

(b) seven members nominated by the non-central committee states (ie one each from the seven non-central committee states).

[18] The central committee, comprising the 25 central committee members, once it is elected, shall amongst themselves elect Dong Zong's office bearers. This is found in rule 5.2.3 of the constitution that provides as follows:

> The central committee members shall within fourteen (14) days after the Annual General Meeting of the election year, elect among themselves the following:

(a) One (1) Chairman;

(b) One (1) Deputy Chairman;

(c) Five (5) Vice Chairman. The office of one (1) Vice-Chairman is reserved for the state members of Sarawak and Sabah who shall assume office in rotation; whereas the office of the other four (4) Vice-Chairman shall be reserved for the eleven (11) state members in West Malaysia to be contested in the election;

(d) One (1) Secretary-General;

(e) Two (2) Assistant Secretary-General;

(f) One (1) Treasurer;

(g) One (1) Assistant Treasurer.

[19] The election year comes once in every four years. This is provided in rule 5A.9 of the constitution is the following words:

> The term of office for central committee members, Central Executive Committee Members and the members of other committee shall be four (4) years. They are eligible to be re-elected and hold the position, save and except the Chairman whose terms shall not exceed two (2) terms consecutively.

This means that constitutional term of office for the central committee and the central executive committee (as discussed below) is four years.

[20] According to rule 5.2.4 of the constitution, the chairman may, with the sanction of the central committee, nominate not more than seven members from persons or organisations who are actively involved in Chinese education to be the nominated central committee members. It is worth noting that these nominated central committee members do not take part in the election of the office bearers, as they are appointed post-election of the chairman. This is another crucial factor in the determination of the issues at hand.

[21] The constitution also provides for the formation of a central executive committee, which shall comprise the office bearers elected by the central committee pursuant to rule 5.2.3 (as described above) plus not more than three members appointed by the chairman from amongst the central committee.

[22] The central executive committee, according to rule 5.3.3 of the constitution, shall during the adjournment of the central committee, be responsible for the running of the affairs of the society and shall execute all resolutions of the central committee.

A THE DISPUTE

[23] The antecedent facts leading to the issuance of the notice of meeting dated 6 January 2015 by the first defendant may be summarised as follows. There is an apparent crisis of confidence that has been brewing in Dong Zong for sometime now. The facts presented by both sides shows that there are two factions in the central committee and the central executive committee who are at odds with each other, which has led to anarchy in the society. The breakdown of trust in the relationship between these two factions has become so serious that acrimonious accusations are constantly being hurled against each other in public. Much to the detriment of the society, this has resulted in the central executive committee becoming dysfunctional.

[24] The defendants aver that a majority of state association members, a majority of the central and a majority of Central Executive Committee of Dong Zong had lost confidence in the plaintiff's leadership and that of the Deputy Chairman of Dong Zong, Chow Siew Hon ('deputy chairman'). Attempts to remove the Deputy Chairman as a member of the Central Executive Committee by the defendants herein had been thwarted by the plaintiff's refusal to convene a meeting of the central committee to discuss and deliberate on the matter.

[25] The defendants further state that in order to resolve the problem plaguing Dong Zong, they had delivered a requisition to the plaintiff, as the Chairman of Dong Zong, to convene a central committee meeting to dissolve the current (ie 29th) central executive committee and to re-elect a new central executive committee. However, the plaintiff refused to accede to this requisition on grounds that the requisition is unconstitutional. The defendants then forwarded a similar requisition to the first defendant, as Dong Zong's Secretary General, to convene the central committee meeting to consider the aforesaid agenda. The first defendant, acting on that requisition, issued the notice of meeting dated 6 January 2015 to convene a central committee meeting at 2pm on 20 January 2015, which is the subject matter of this action.

[26] The defendants aver that their reasons for requisitioning the central committee meeting can be summarised as follows:

(a) serious differences, friction, disunity and disharmony has plagued Dong Zong for sometime, which has resulted in the majority of the state associations members, central committee members and central executive committee members losing confidence in the plaintiff's leadership;

(b) there is a split in Dong Zong's leadership, caused by serious and irreconcilable differences between the defendants, who are the majority

central committee members and central executive committee members, and a minority of members of the central committee and central executive committee who support the plaintiff;

(c) the plaintiff is unable to provide effective leadership to unite the central executive committee members, to hold any fruitful meetings and to resolve matters concerning Dong Zong, as at to date, and the meetings convened by the plaintiff were consecutively inquorate on several occasions. This has precipitated factional antagonism within the central executive committee, which has since widened and the differences have become irreconcilable;

(d) the situation has worsened as a result the plaintiff not giving effect to the views and opinions expressed by the majority central committee members and/or central executive committee members; and

(e) the defendants had on several occasions attempted to resolve the differences and had given plaintiff the opportunity to provide such leadership and lead Dong Zong for the common good and interest of Dong Zong in particular and the cause of Chinese education in Malaysia in general but the plaintiff had not only failed to do so but he has aggravated the differences.

[27] The defendants aver that by reasons of the aforesaid, the central executive committee could not and cannot function properly or effectively. Thus, to ensure the effective and smooth running of Dong Zong's affairs, the defendants had requisitioned for the central committee meeting to discuss and consider the motion to dissolve and re-elect the office bearers and reconstitute the central executive committee.

[28] The chronological events leading to the defendants' requisition and the issuance of the notice of meeting dated 6 January 2015 by the first defendant as the Secretary General of Dong Zong to all central committee members to convene the central committee meeting (which was scheduled to be held on 20 January 2015) with the agenda to dissolve the 29th central executive committee and re-elect the 29th central executive committee, are as stated in paras 9.1–9.5.6 of the defendant's affidavit in reply.

[29] Learned counsel for the plaintiff contends that the term of office of the central executive committee is four years from the date of election, as provided in rule 5A.9 of the constitution, and as such submits, that once elected, the central executive committee cannot be dissolved and must serve out its term of office. The plaintiff mounts this argument on grounds that the constitution is silent as to whether the central committee, that is the body empowered by the constitution to elect the office bearers who then make up the central executive committee, has the power to dissolve and re-elect the central executive

committee before the expiry of its constitutional term of office. The defendants, whilst conceding that the constitution is silent on this issue, contend that the central committee, as the electing or appointing body, has in law the power to dissolve and re-elect the office bearers, and by extension the central executive committee, during the pendency of term of office of the central executive committee.

[30] The defendant's argue that even though the constitution is silent on the matter of the central committee having the power to dissolve and re-elect the central executive committee, such lacuna can be referred to the central executive committee and the central committee for determination. In this regard the defendant's point out that rule 9.3 of the constitution provides that where:

> ... the constitution is silent or there is any dispute, the CEC shall discuss and resolve the matter. Its decision shall be validated by the approval of the central committee.

Therefore, the defendants argue that the constitution provides for internal mechanisms for such disputes to be resolved by the central executive committee and the central committee. The defendants further contend that the plaintiff could have availed of the provisions of rule 9.3 of the constitution and internally resolved the matter/dispute using this internal dispute resolution mechanism. However, the plaintiff has persistently failed to convene the central executive committee and central committee meetings to discuss and resolve the matters at hand. And instead the plaintiff has chosen to come to court and injunct the defendants from internally resolving the issue by reference to the constitutional provisions.

[31] I find merit in the defendant's argument. It is well settled law that when domestic or internal dispute resolution mechanisms are provided in a society's constitution, rules or by-laws, then disputes involving the society and its members must be first resolved through such mechanism, before seeking the assistance of the court. In this regard, I agree with the defendants' contention that this dispute ought to have been resolved at first instance by reference to the central executive committee and then to the central committee for its endorsement. The plaintiff would have to exhaust the domestic remedies as provided in the constitution and it is premature for the plaintiff to come to court with this action. See *SI Rajah & Anor v Dato Mak Hon Kam & Ors* [1993] 3 MLJ 741; [1994] 1 CLJ 215.

[32] However, since by the consent order, parties have agreed to the court determining the issue of the lawfulness of the dissolution and re-election of the central executive committee before expiry of its term of office, I will proceed to determine that issue.

[33] Having considered the law and the facts, I find that there is no merit in the plaintiff's contention that the central executive committee once elected must serve out its full term of four years, and that it cannot be dissolved mid stream. It is trite law that where a constitution or law confers powers to appoint, the appointing authority would also have the power to remove. This principle was very well restated by Syed Ahmad Idid J in *Sabdin Ghani v Musa Haji Aman* [1992] MLJU 88; [1993] 2 CLJ 109 at p 11 (MLJU); p 113 (CLJ) as follows:

> ... where the constitution confers power to appoint, the appointing authority should also have the power to remove, to suspend, to re-appoint or reinstate.

[34] This principle is also statutorily embodied in ss 47 and 94 of the Interpretation Acts 1948 and 1967 (Consolidated and Revised 1989) in the following terms:

> Section 47
>
> Where a power to make an appointment is conferred by any written law, the appointing authority shall also have power (subject to any limitations or qualifications which affect the power of appointment) to remove, suspend, reappoint or re-instate any person appointed in the exercise of the power.
>
> Section 94
>
> Where a written law confers upon any person or authority a power to make appointments to any office or place, the power shall, unless the contrary intention appears, be construed as including a power to dismiss or suspend any person appointed and to appoint another person temporarily in the place of any person so suspended or in place of any sick or absent holder of such office or place:
>
> Provided that where the power of such person or authority to make such appointment is only exercisable upon the recommendation or subject to the approval or consent of some other person or authority, such power of dismissal shall, unless the contrary intention appears, only be exercisable upon the recommendation or subject to the approval or consent of such other person or authority.

[35] The Court of Appeal in *Lim Eye Thun v Majlis Peguam Malaysia & Anor* [2010] 2 MLJ 444 at p 445 reiterated this principle in the following terms:

> This power to appoint carries with it the power to revoke the appointment; see *SR Tewari*, where the Allahabad Supreme Court held that the power to appoint ordinarily carries with it the power to terminate appointment, and a power to terminate may, in the absence of restrictions express or implied, be exercised subject to the conditions prescribed in that behalf by the authority competent to appoint. In Malaysia, this principle is given statutory expression in s 47 of the Interpretation Acts 1948 and 1967 in the following words ...

[36] The Singapore High Court in *Low Fun Boon and Others v Wong Teck*

Chow and Others [2000] SGHC 183 had occasion to consider a similar issue as to whether the general body of a registered society which was empowered to appoint the office bearers had the implied power to remove them and held as follows:

> ... as the General Meeting had power to elect office-bearers, I was of the view that it must also have the implied power to remove such office-bearers, see Halsbury's Laws of England (Fourth Edition) Volume 9 at para 1266 and *Chen Cheng & Anor v Central Church & another* [1996] 1 SLR 313.
>
> Furthermore, the General Meeting is the highest authority of the Association which has the power to pass or revise the rules and regulations of the Association. Accordingly, it could pass a resolution to remove the President as an ad hoc revision of the rules and Regulations.

[37] In *Halsbury's Laws of England* (4th Ed, 2006 Reissue) Vol 9(2) at paras 1163 and 1166 the position in England in respect of this issue is summarised as follows:

> 1163 Power of amotion. 'Amotion' means depriving a corporate officer of his office. A power of amotion is incident to a corporation, unless it has been taken away by statute. It is necessary to the good order and government of corporate bodies that there should be such a power ...
>
> ...
>
> 1166 Removal of officer at will. Where a person is appointed to and holds an office at the will of the corporation, he may be removed from it at the will of the corporation, which may be signified to him by a mere declaration by the competent authority ...

[38] That English common law position, in my opinion, would be the correct proposition of the law in Malaysia as well. This has been consistently expressed by our courts, as can be seen from the cases referred to above.

[39] The highest or supreme constitutional authority of Dong Zong, as provided in rule 5.1.1 of the constitution, is the general meeting. It is the General Meeting that elects the central committee, to supervise and oversee the affairs and management of the society. The central committee in turn elects the officer-bearers, who together with the three members appointed by the chairman, constitute the central executive committee. According to rule 5.3.3 of the constitution, the central executive committee shall during the adjournment of the central committee, be responsible for the running of the affairs of the society and shall execute all resolutions of the central committee. Therefore, the central executive committee is a creature born out of the constitutional powers granted to the central committee, and as such, by implication, would at all times have the power to dissolve the central executive committee or remove any of its office bearers, unless otherwise expressly or impliedly provided in the constitution. Since, there is no such express or

implied prohibition in the constitution, the central committee must necessarily be taken to have the implied power to remove such office-bearers and dissolve and reconstitute the central executive committee during the pendency of their term of office.

[40] My reasoning in this regard is further supported by the highly persuasive opinion of Herbstein J at the High Court of South Africa, in the case of *Cape Indian Congress v Transvaal Indian Congress* 1948(2) SA 595 AD, where in resolving a similar question relating to the lawfulness of the removal of office bearers of an association before the expiry of their term of office, the learned judge had held that:

> The fixing of a period for which a committee is to serve, does not, in my view, constitute a contract by the principal with the agent that he will not, during that period, provoke the authority. Nor, in my opinion, can such a contract be implied here. There must be special circumstances before such inference can be drawn.

[41] That dicta in *Cape Indian Congress v Transvaal Indian Congress* was considered and applied by another High Court of South Africa (Western Cape High Court, Cape Town) in the more recent case of *SWD Rugbyvoetbalunie en Ander v Baartman and Others* [2010] ZAWCHC 82. Le Granje J in delivering the well reasoned decision of the court in that case held as follows:

> The right of members of a voluntary association to remove the management committee or any member thereof before their term of office has expired, has been the subject of a number of decided cases in our law.
>
> ...
>
> In the absence of any provision in a constitution of a voluntary association, whether a *universitas* or not, it can only be fair, and accordance with law, that the right of members to recall an elected executive committee at a properly constituted special or annual general meeting, must be implied. To view it any differently, would be untenable and can produce absurd results. The dictum of Herbstein J in the *Cape Indian Congress* case at 597, is in my view apposite in this instance:
>
> > To hold that the members of an elected committee, in which is included the officials, have an indefeasible right of continuity of office for the period for which they have been elected, may lead to absurd results. The treasurer might embezzle the funds of the association, the secretary fail or neglect to carry out his duties, some members may not attend meetings, so that the necessary quorum is never obtainable; the Committee as a whole might conduct a policy, not only in conflict with the wishes of members, but one harmful to the Association and in conflict with its objects. Is there to be no remedy available to the members except resignation by them from the association? In my opinion the answer is in the negative and the basis for this answer is to be found in the legal relationship between the members as a whole and the Committee.

Granje J then looked at the constitution of the association in question and concluded as follows:

> The constitution in question does no more than fix a period for which a committee or office bearers is to serve. The reference to the officers and committee, holding office for the stipulated period in its context, means nothing more than their period of office will automatically come to an end at the expiry of that period, provided it is not terminated earlier at a proper meeting.
>
> ...
>
> The evidence in this matter further clearly demonstrates that the majority of the members of the SWD have lost confidence in Cronje as president and the executive committee he chairs ... I am satisfied that the members at the AGM were entitled to remove the members of the elected executive committee before its three year term expired.

[42] The well-reasoned judgment of Granje J has equal application in our jurisdiction for it accords well with the provisions of ss 47 and 94 of the Interpretation Act and the principles established by case law. It is my considered view that in the absence of an express term in the constitution of a registered society, the executive committee or its members do not have an indefeasible right of continuity of office for the period for which they have been elected. Where the majority members of a registered society have lost confidence in the executive committee, or for that matter any member of that committee, during a period for which they have been elected, the executive committee or any of its members may be removed before the expiry of the term by a vote of the members of the electing body at a properly convened meeting.

[43] In the present case, the central executive committee is elected for a term of four years and the constitution is silent on the powers of the central committee to remove and/or re-elect the office bearers who constitute the central executive committee. In such circumstance, is the society powerless to do anything to the composition of the central executive committee once it is elected for a four year term, even when the said committee has become totally dysfunctional and is unable to promote the objects of the society? I think not. The central executive committee's term of four years as fixed by rule 5A.9 of the constitution, means nothing more than that the committee's period of office will automatically come to an end at the expiry of the period, provided that it is not terminated earlier at a proper meeting of the electing body. The period of office stipulated in the constitution does not afford security of tenure to the members of central executive committee.

[44] It is evident that the plaintiff has lost the confidence of a majority of the members of the central committee and the central executive committee. As a result of the lack of confidence, meetings of both these committees called by the plaintiff could not be held for lack of quorum. Now, in the circumstance, if the court were to accept the plaintiff's contrary contention, then it would

lead to a complete paralysis of the organisation. This cannot be the intention of the framers of the constitution, nor the intended purpose of its members.

[45] Therefore, I find that it would be lawful for the central committee, comprising only the 25 members elected by the general meeting, sans the seven nominated central committee members, at a properly convened meeting to consider and if deemed fit to remove and re-elect the office bearers elected in accordance to rule 5.2.3 of the constitution and thereafter reconstitute the central executive committee by appointment of the three additional members nominated by the freshly elected chairman.

[46] In the circumstance, I hold that the proposed agenda in the notice of meeting dated 6 January 2015 is valid and proper in law. In this regard, I order that the plaintiff shall, in accordance to the terms of the consent order, issue a notice of meeting to the aforesaid 25 members of the central committee to convene a meeting of the central committee within 21 days of date hereof to consider and resolve the matters stated in the agenda of the notice of meeting dated 6 January 2015 issued by the first defendant.

Order accordingly.

Reported by Afiq Mohamad Noor